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Supreme Court, U.S.
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No. 94-1110

**IN THE**

**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1994**

RICHARD T. QUILLIAN,

*Petitioner*

v.

PARKER EVATT, COMMISSIONER, SCDC, AND TONY L. STRAWHORN, DIRECTOR, DIVISION OF COMMUNITY SERVICES,

*Respondents.*

**ON WRIT OF CERTIORARI TO THE SOUTH CAROLINA SUPREME COURT AND THE SOUTH CAROLINA COURT OF APPEALS**

# BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## STATEMENT OF THE CASE

While an inmate confined to the South Carolina Department of Corrections (SCDC), the Petitioner, Richard T. Quillian, applied for work release. That application for work release was rejected based in part on a psychological evaluation that was performed in conjunction with his application. In response to the rejection of his work release application, Quillian filed this lawsuit, pursuant to 42 U.S.C. § 1983, for the alleged violation of his constitutional rights. Quillian's complaint also purports to state a cause of action pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, et seq.

The Respondents, Parker Evatt, the Commissioner of the South Carolina

Department of Corrections, and Tony L. Strawhorn, the Director of the Division of Community Services, filed a motion for summary judgment, which was heard by the Honorable Joseph A. Wilson, II, on January 22, 1992. By his order dated March 4, 1992, Judge Wilson granted summary judgment in favor of the Respondents. The Petitioner Quillian then appealed to the South Carolina Supreme Court, which appeal was assigned to the South Carolina Court of Appeals. By its opinion filed on April 13, 1994, the Court of Appeals affirmed the lower court's decision. See, Quillian v. Evatt, ___ S.C. ___, 445 S.E.2d 639 (Ct. App. 1994). The Petitioner then petitioned the Court of Appeals for a rehearing, which was denied.

The Petitioner Quillian thereafter filed a petition for a writ of certiorari with the South Carolina Supreme Court. By

order dated September 22, 1994, the South Carolina Supreme Court denied Quillian's petition.

The Petitioner Quillian has now filed a petition for writ of certiorari with the United States Supreme Court. The Respondents oppose the granting of a writ of certiorari in this case.

## REASONS FOR DENYING WRIT

**I. THE ISSUES RAISED BY THE PETITIONER IN HIS PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT ARE NOT PROPERLY PRESERVED ON APPEAL. NONETHELESS, THE SOUTH CAROLINA SUPREME COURT AND THE SOUTH CAROLINA COURT OF APPEALS CORRECTLY DECIDED THE ISSUES PROPERLY PRESERVED ON APPEAL.**

In his petition for a writ of certiorari, the Petitioner Quillian raises three issues that can be best summarized as follows:

(1) that the Petitioner was wrongly deprived of legal assistance in his pursuit of these claims;

(2) that the Petitioner's constitutional rights were violated by the denial of work release; and

(3) that the "standards of judicial review" are "biased" against him.

With the possible exception of the second issue, these issues were not raised in

Quillian's petition for rehearing to the South Carolina Court of Appeals. Moreover, these issues were raised <u>for the first time</u> in Quillian's petition for writ of certiorari to the South Carolina Supreme Court.[1] Rule 226(d)(2), SCACR,[2] provides: "Only those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court." Therefore, Rule 226(d)(2) clearly

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[1] It should be noted that Quillian's petition for writ of certiorari to the United States Supreme Court is identical to his petition for writ of certiorari to the South Carolina Supreme Court. The issues raised in these petitions, however, are not the issues originally raised on appeal and are not the issues addressed by the South Carolina Court of Appeals. Quillian has raised these issues for the first time after the decision by the South Carolina Court of Appeals was issued.

[2] South Carolina Appellate Court Rules (SCACR).

prevented the consideration of the Petitioner's first and third issues by the South Carolina Supreme Court. Likewise, the United States Supreme Court is prevented from addressing those issues because they were not properly raised nor preserved for appeal in the lower courts.

Moreover, with regard to the second issue set forth in Quillian's petition, that issue also was not raised nor addressed by the South Carolina Court of Appeals. The Court of Appeals considered whether the Petitioner had a liberty interest in participating in a work release program. The Court concluded that "the denial of participation in a work-release program, standing alone, affords no basis for a claim under 42 U.S.C. § 1983." Quillian v. Evatt, ___ S.C. ___, 445 S.E.2d 639, 640 (Ct. App. 1994).

The Petitioner did raise for the first time in his petition for rehearing to the Court of Appeals that he was denied work release because of his political and religious beliefs. That issue was not raised in the lower court nor was it ruled upon by the lower court. In its decision, the Court of Appeals correctly stated that various constitutional claims, including any First Amendment claim, were not preserved for appeal:

> On appeal, Quillian argues numerous other issues including raising claims under 42 U.S.C. § 1983, denial of due process, denial of equal protection, and retaliation for exercise of constitutional rights. None of these issues are preserved for appeal. He failed to raise many of these issues to the trial judge. More importantly, the trial judge did not rule on any of these issues, nor did Quillian seek rulings by post-trial motions, therefore, this court cannot consider these issues on appeal.

Quillian v. Evatt, ___ S.C. ___, 445 S.E.2d 639, 640 (Ct. App. 1994).[3] Furthermore, there is absolutely no evidence in the record to suggest that Quillian was denied participation in a work release program because of his religious or political beliefs.

Consequently, even if the Petitioner's second issue was not properly preserved on appeal and lacks merit. In short, the decision of the South Carolina Court of Appeals was a correct one, and, as discussed below, the Petitioner has presented no argument which favors the issuance of a writ of certiorari in this case.

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[3] The Petitioner Quillian has not sought review of this portion of the decision of the South Carolina Court of Appeals in his petitions to either the South Carolina Supreme Court or the United States Supreme Court.

## II. THE PETITIONER HAS FAILED TO DEMONSTRATE SUFFICIENT REASONS FOR THE ISSUANCE OF A WRIT OF CERTIORARI.

Supreme Court Rule 10 sets forth several reasons to support the United States Supreme Court's issuance of a writ of certiorari. The Petitioner has failed, however, to demonstrate that the present case falls within any of those criteria. First, the decisions of the South Carolina Supreme Court and South Carolina Court of Appeals do not conflict with any decision of a federal court of appeals on the same matter. Second, the decisions of the South Carolina Supreme Court and South Carolina Court of Appeals do not conflict with any decision of a state court that addresses similar issues. And third, the decisions of the South Carolina Supreme Court and South Carolina Court of Appeals

do not conflict with any decision of the United States Supreme Court.

## CONCLUSION

Based on the foregoing reasoning and analysis, the Respondents respectfully submit that the South Carolina Supreme Court and South Carolina Court of Appeals correctly decided this case and that there is no reason for this Court to issue a writ of certiorari.

Respectfully submitted,

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